99 PAC. 310 (WASH.).—*Held,* that blasting rock in the Cascade Mountains, far removed from any human habitation, falls within the exceptions to the general rule of an employer's non-liability for injuries resulting from the doing of work placed in the hands of an independent contractor.

The weight of authority seems to hold that blasting is within the exceptions to the general rule if the employer used due care in selecting a competent contractor, *Hill v. Schneider,* 13 N. Y. App. Div. 299; *Forsyth v. Hooper,* 93 Mass. 419; and it is his legal duty to select a competent and careful contractor. *Brannock v. Elmore,* 114 Mo. 55. Furthermore, this rule applies even though the blasting is done in close proximity to adjoining buildings. *French v. Vix,* 143 N. Y. 90; *contra*: *Wetherbee v. Partridge,* 175 Mass. 185. But other courts hold that blasting is not within the exceptions. *Buddin v. Fortunato,* 16 Daly 195 (N. Y.); *St. Paul Water Co. v. Ware,* 16 Wall. 566 (U. S.). Yet some jurisdictions hold the principal a joint wrong-doer. *Carmen v. Steubenville, etc., Ry. Co.,* 4 Ohio St. 399.

MONEY PAID—MONEY PAID UNDER ILLEGAL CONTRACT.—MCCALL V. WHALEY, 115 S. W. 658 (TEX.).—*Held,* that if an illegal contract is executory, money paid thereunder may be recovered.

The law is not satisfactorily settled on this point, but generally money paid or goods delivered on an illegal executory contract can be recovered. *Love v. Harvey,* 114 Mass. 80; *Fisher v. Hildreath,* 117 Mass. 558. In such cases the law implies a promise on the part of the person receiving the money to refund it in favor of the party paying it. *Adams Express Co. v. Reno,* 48 Mo. 268. Because it best comports with public policy to arrest the illegal proceeding before it is consummated. *Stacey v. Foss,* 19 Me. 335. The following cases illustrate the rule holding that a recovery could be had for money paid on shares of stock to be illegally issued, *Fairchild v. Gallatin,* 100 U. S. 47; or for goods sold in furtherance of an illegal combination, *Continental Wall Paper Co. v. L. Vought and Sons Co.,* 77 C. C. A. 567; or for a bond or mortgage given to indemnify bail, *Moloney v. Nelson,* 158 N. Y. 351; *contra*: *U. S. v. Ryder,* 110 U. S. 729. But in *Ullman v. St. Louis Fair Ass'n,* 167 Mo. 273, a recovery was denied on goods delivered in performance of an illegal contract; also for money paid on a note given to renounce an executorship, *Ellicott v. Chamberlain,* 38 N. J. L. 604; and on a contract between a councilman and a municipal corporation. *Bay v. Davidson,* 133 Ia. 688. It seems, however, that a recovery will be denied on all contracts involving moral turpitude or contrary to public policy. *Edwards v. Randle,* 63 Ark. 318.

NEW TRIAL—MISCONDUCT OF COUNSEL—TREATING JURORS TO CIGARS.—STEENBURGH V. MCRORIE, 113 N. Y. SUPP. 1118.—*Held,* that where one of the attorneys for the prevailing party twice treated the jurors to cigars during the progress of the trial and before they had retired to deliberate on their verdict, a new trial is required.

It has been well established that a new trial will be granted if jurors are entertained during the trial by the party in whose favor the

verdict was rendered. *Johnson v. Hobard,* 45 Fed. 542; *Doud v. Guthrie,* 13 Ill. App. 653; *Pelham v. Page,* 6 Ark. 535; *Cottle v. Cottle,* 6 Me. 140. And so it has been ground for a new trial, that the prevailing party furnished the jury with cigars. *Platt v. Threadgill,* 80 Fed. 192; *People v. Montague,* 71 Mich. 447; *Bender v. Buehrer,* 8 Ohio C. C. 244. But if the furnishing of cigars or refreshments was without any improper design, and did not influence the jury, the verdict will stand. *Koester v. Ottumwa,* 34 Iowa 41; *Kennedy v. Halliday,* 105 Mo. 34. And the verdict will stand where the jury were ignorant that the refreshments were furnished by a party to the suit. *Vane v. City of Evanston,* 150 Ill. 616. And also where prevailing party was ignorant that they were being charged to him. *Tripp v. Bristol Co.,* 2 Allen (Mass.) 556. And if during the suspension of a cause refreshments were furnished by both parties, the verdict will not be set aside. *Dennison v. Collins,* 1 Cow. (N. Y.) 111.

TELEGRAPHS AND TELEPHONES—ERRORS—DAMAGES FOR LOSS OF CONTRACT.—WESTERN UNION TEL. CO. v. WEBB & SMITH, 48 So. 408 (MISS.).—*Held,* that a telegraph company is not liable for damages resulting from an error in a message from a prospective contractor to plaintiffs as to the time in which he could complete a building, which error caused plaintiff to award the contract to another firm at a higher bid; there being no complete contract and plaintiff losing only an opportunity to make an advantageous contract.

The decisions are not uniform, but the weight of authority is that damages can be recovered for the loss of a prospective contract. *Tel. Co. v. Tatman,* 73 Ga. 285; *Bowen v. Tel. Co.,* 84 Tex. 476; *Tel. Co. v. Nagle,* 11 Tex. Civ. App. 539. It is perfectly competent to prove what would have been done if a telegraph message had been promptly transmitted, as a means of fixing the damages against the company for a failure to deliver. *True v. Tel. Co.,* 60 Me. 9; *Tel. Co. v. Hyer,* 22 Fla. 637. The cases adopting the doctrine of the case at hand do so on the ground that though a profitable speculation might and probably would have been made, yet damages cannot be recovered because they cannot be made reasonably certain by evidence. *Booth v. Rolling Mills,* 60 N. Y. 487; *White v. Miller,* 71 N. Y. 173. Some courts hold in cases of this kind that damages are too remote for recovery against a telegraph company. *Tel. Co. v. Watson,* 94 Ga. 202.

TELEGRAPH AND TELEPHONES—INJURIES FROM CONSTRUCTION AND MAINTENANCE—CARE REQUIRED.—SOUTHERN TELEGRAPH AND TELEPHONE CO. v. EVANS, 116 S. W. 418 (TEX.).—*Held,* that a telephone company placing and maintaining an instrument in the house of a patron for his use must exercise the care of a prudent man in selecting such approved lightning arresters as are reasonably necessary to guard against accidents that might fairly be expected to occur.

The courts are in hopeless conflict on this point. *Enis v. Gray,* 87 Hun. 355 (N. Y.), holds that ordinary care is required to protect the occu-